

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENJAMIM FONKEM,  
Plaintiff,

V.

DEAN O'MALLEY AND TIMOTHY  
AHERN, in their individual capacities,  
Defendants.

C.A. NO.: 04-10754 EFH

DEFENDANT, TIMOTHY AHERN'S, ANSWER TO PLAINTIFF'S COMPLAINT

**FIRST DEFENSE**

The defendant, Timothy Ahern, hereby states that the plaintiff's complaint fails to state a cause of action upon which relief can be granted.

**SECOND DEFENSE**

The defendant, Timothy Ahern, hereby answers the plaintiff's Complaint, paragraph by paragraph, as follows:

**INTRODUCTION**

1. The defendant states the allegations contained in this paragraph state a conclusion of law to which the defendant need not respond.

**JURISDICTION**

2. The defendant states the allegations contained in this paragraph state a conclusion of law to which the defendant need not respond.

**PARTIES**

3. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

4. The defendant admits that Dean O'Malley and Timothy Ahearn were and are Massachusetts State Troopers. The defendant states that the remaining allegations contained in this paragraph state a conclusion of law to which the defendant needs not respond.

5. The defendant admits he was acting under color of state law during his interaction with the plaintiff.

**FACTS**

6. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

9. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

15. The defendant admits that at some time he arrived on the scene. At that time a man was in the back of Trooper O'Malley's cruiser.

16. The defendant admits that he and Trooper O'Malley searched the plaintiff's car. The defendant denies the remaining allegations contained in this paragraph.

17. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

20. The defendant denies the allegations contained in this paragraph.

21. The defendant denies the allegations contained in this paragraph.

22. The defendant denies the allegations contained in this paragraph.

23. The defendant denies the allegations contained in this paragraph.
24. The defendant denies the allegations contained in this paragraph.
25. The defendant admits the allegations contained in this paragraph.
26. The defendant admits that Trooper O'Malley released the man after the encounter.
27. The defendant admits the allegations contained in this paragraph.
28. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
29. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

**COUNT I: 42 U.S.C. §1983**

30. The defendant hereby repeats his responses to paragraphs 1 through 29 of the plaintiff's complaint.
31. The defendant admits the allegations contained in this paragraph.
32. The defendant denies the allegations contained in this paragraph.
33. The defendant denies the allegations contained in this paragraph.
34. The defendant admits the allegations contained in this paragraph.
35. The defendant states the allegations contained in this paragraph state a conclusion of law to which the defendant need not respond.
36. The defendant denies the allegations contained in this paragraph.
37. The defendant denies the allegations contained in this paragraph.
38. The defendant denies the allegations contained in this paragraph.

**COUNT II: M.G.L.c. 12, §§ 11H-I, MASSACHUSETTS CIVIL RIGHTS ACT**

39. The defendant hereby repeats his responses to paragraphs 1 through 38 of the plaintiff's complaint.
40. The defendant denies the allegations contained in this paragraph.
41. The defendant denies the allegations contained in this paragraph.
42. The defendant denies the allegations contained in this paragraph.

**COUNT III: M.G.L. c. 214§1B – INVASION OF PRIVACY**

43. The defendant hereby repeats his responses to paragraphs 1 through 42 of the plaintiff's complaint.

44. The defendant states the allegations contained in this paragraph state a conclusion of law to which the defendant needs not respond.

45. The defendant denies the allegations contained in this paragraph.

46. The defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant, Timothy Ahern, denies that the plaintiff is entitled to judgment in any amount against him and, furthermore, the defendant asks this Honorable Court to enter judgment for the defendant and against the plaintiff along with interest, costs and attorneys fees.

**AFFIRMATIVE DEFENSES**

**AFFIRMATIVE DEFENSE NO. 3**

By way of affirmative defense, the defendant states that the action is barred by the applicable statute of limitations.

**AFFIRMATIVE DEFENSE NO. 4**

By way of affirmative defense, the defendant states that the defendant's actions are entitled to qualified good faith immunity.

**JURY CLAIM**

THE DEFENDANT, TIMOTHY AHERN, CLAIMS A TRIAL BY JURY AS TO ALL ISSUES PROPERLY TRIABLE TO A JURY.

Respectfully submitted,  
Timothy Ahern,  
By his attorneys,

/s/ Thomas P. Campbell  
Leonard H. Kesten, BBO #542042  
Thomas P. Campbell, BBO #564124  
Brody, Hardoon, Perkins & Kesten, LLP  
One Exeter Plaza  
Boston, MA 02116  
(617) 880-7100

Dated: October 1, 2004